

Template pursuant to Section 3 (a) of the
ICN Framework on Competition Agency Procedures

Competition and Consumer Commission of Singapore, Singapore

The following template is submitted by **Competition and Consumer Commission of Singapore, Singapore** pursuant to Section 3(a) of the ICN Framework on Competition Agency Procedures (“CAP”).

I. Introduction

Established in January 2005, the Competition and Consumer Commission of Singapore (CCCS) is an independent statutory board under the Ministry of Trade and Industry which administers and enforces the Competition Act (Chapter 50B), and the Consumer Protection (Fair Trading) Act (Chapter 52A).

In relation to the Competition Act (Chapter 50B) (“the Competition Act”), CCCS investigates and enforces against practices that have an adverse effect on competition in Singapore. In addition, CCCS has a statutory duty to advise the government or other public authority on national needs and policies in respect of competition matters. CCCS also promotes and sustains competition in markets in Singapore as well as promotes a strong competitive culture and environment throughout the economy in Singapore.

More information on CCCS can be found in its [website](#).

II. Laws, Regulations, and Policies relevant for the implementation of the CAP

For each CAP Principle below, please explain how your competition law investigation and enforcement procedures meet the Principle. Please highlight important features relevant for the implementation of the CAP and explain limitations, if applicable. Feel free to include links or other references to related materials such as relevant legislation, implementing rules and regulations, and guidelines where helpful and appropriate.

Please update your Template reflecting significant changes as they relate to the CAP, as needed.

b) Non-Discrimination

Each Participant will ensure that its investigation and enforcement policies and Procedural Rules afford Persons of another jurisdiction treatment no less favorable than Persons of its jurisdiction in like circumstances.

CCCS' will ensure that its competition guidelines and procedures afford party(s) of another jurisdiction treatment that is no less favourable than persons of its jurisdiction in like circumstances.

c) Transparency and Predictability

- i. *Each Participant will ensure that Competition Laws and regulations that apply to Investigations and Enforcement Proceedings in its jurisdiction are publicly available.*
- ii. *Each Participant with the authority to adopt Procedural Rules will have in place such rules applicable to Investigations and Enforcement Proceedings in its jurisdiction.*
- iii. *Each Participant will ensure that Procedural Rules that apply to Investigations and Enforcement Proceedings in its jurisdiction are publicly available.*
- iv. *Each Participant will follow applicable Procedural Rules in conducting Investigations and in participating in Enforcement Proceedings in its jurisdiction.*
- v. *Each Participant is encouraged to have publicly available guidance or other statements, clarifying or explaining its Investigations and Enforcement Proceedings, as appropriate.*

Singapore's Competition Act, as well as the relevant subsidiary legislation that sets out the Procedural Rules are publicly available at the website [Singapore Statutes Online](#).

CCCS has published guidelines indicating the manner in which CCCS will interpret, administer and enforce infringement of the prohibitions in the Competition Act (Chapter 50B). These can be found in the CCCS Guidelines which are publicly available at the [CCCS website](#).

In addition, CCCS maintains a public register containing information on its decisions and commitments accepted, and also regularly publishes public consultations and annual reports on the CCCS website.

d) Investigative Process

- i. *Participants will inform any Person that is the subject of an Investigation as soon as practical and legally permissible of that Investigation, according to the status and specific needs (e.g., forensic considerations) of the Investigation. This information will include the legal basis for the Investigation and the conduct or action under Investigation.*
- ii. *Participants will provide any Person that has been informed that it is the subject of an Investigation, or that has notified a merger or other transaction or conduct, with reasonable opportunities for meaningful and timely engagement on significant and relevant factual, legal, economic, and procedural issues, according to the status and specific needs of the Investigation.*
- iii. *Participants will focus investigative requests on information that they deem may be relevant to the competition issues under review as part of the Investigation. Participants will provide reasonable time for Persons to respond to requests during Investigations, considering the needs to conduct informed Investigations and avoid unnecessary delay.*

CCCS may issue a statutory notice under section 63 of the Competition Act ("**section 63 Notice**") to an undertaking to provide specified documents or specified information to CCCS. Such notices are issued when CCCS has reasonable grounds for suspecting there has been an infringement of the Competition Act by the undertaking(s) and shall indicate the subject matter and purpose of the investigation, specify the time and place at which any document is to be produced or any information is to be provided, as well as the manner and form in which it is to be produced or provided.

When specifying the time for the production of documents or information, CCS will consider the amount and complexity of the information required, the resources available to the undertaking and the need to avoid unnecessary delay to the Investigation.

CCCS will not ask for more documents or information than what it believes is necessary for the investigation as at the date of the written notice.

e) *Timing of Investigations and Enforcement Proceedings*

Each Participant will endeavor to conclude its Investigations and aspects of Enforcement Proceedings under its control within a reasonable time period, taking into account the nature and complexity of the case.

CCCS endeavours to conclude its investigations and enforcement proceedings within a reasonable time period, taking into account the nature and complexity of the case. CCCS closely monitors the progress of cases.

f) *Confidentiality*

- i. Each Participant will have publicly available rules, policies, or guidance regarding the identification and treatment of confidential information.*
- ii. Each Participant will protect from unlawful disclosure all confidential information obtained or used by the Participant during Investigations and Enforcement Proceedings.*
- iii. Each Participant will take into consideration both the interests of the Persons concerned and of the public in fair, effective, and transparent enforcement regarding the disclosure of confidential information during an Enforcement Proceeding.*

Section 89 of the Competition Act imposes limits on the disclosure of information relating to the business, commercial or official affairs of any person, any matter identified as confidential by a person furnishing information and the identity of persons furnishing information to CCCS, obtained in connection with the exercise of any function and discharge of duties of any specified person under the Competition Act. Any specified person includes a member, an officer, an employee or an agent of CCCS. Regulation 28 of the Competition Regulations sets out the procedural rules for treatment and disclosure of such information.

It is an offence for any specified person to communicate any such information unless it is necessary for the performance of any function or duty or that specified person is lawfully required to disclose the same by any court or the Competition Appeal Board or required or permitted to do so under the Competition Act or any other written law. In addition, CCCS is permitted to disclose information for the purpose of investigations or prosecutions under the Competition Act or giving effect to any provision of the Competition Act or complying with prescribed provisions of an agreement with a foreign country under certain conditions. Disclosure is also allowed with the consent of the person to whom the information relates.

CCCS must have regard to following three considerations when disclosing information to give effect to any provision of the Competition Act:

- the need to exclude, so far as is practicable, information the disclosure of which would in its opinion be contrary to the public interest;
- the need to exclude, so far as is practicable, commercial information the disclosure of which it thinks might significantly harm the legitimate business interests of the undertaking to which it relates, or information relating to the private affairs of an individual the disclosure of which it thinks might significantly harm the individual's interests; and
- the extent to which the disclosure of information is necessary for the purposes for which it is to be disclosed.

In doing so, CCCS may redact the documents it proposes to disclose to remove certain information: for example, by blanking out parts of documents or by aggregating figures.

g) Conflicts of Interest

Officials, including decision makers, of the Participants will be objective and impartial and will not have material personal or financial conflicts of interest in the Investigations and Enforcement Proceedings in which they participate or oversee. Each Participant is encouraged to have rules, policies, or guidelines regarding the identification and prevention or handling of such conflicts.

CCCS and its officials are subject to Singapore's [Public Sector \(Governance\) Act 2018](#) which provides the governance framework for public sector bodies in Singapore. The Public Sector (Governance) Act 2018 has provisions and rules for the disclosure of conflict of interests which include the obligation to disclose interest, to whom and what to disclose, consequences of being interested in the relevant matter, and consequences of failure to disclose interest.

h) Notice and Opportunity to Defend

- Each Participant will provide Persons subject to an Enforcement Proceeding timely notice of the alleged violations or claims against them, if not otherwise notified by another governmental entity. To allow for the preparation of an adequate defense, parties should be informed of facts and relevant legal and economic reasoning relied upon by the Participant to support such allegations or claims.*
- Each Participant will provide Persons subject to a contested Enforcement Proceeding with reasonable and timely access to the information related to the matter in the Participant's possession that is necessary to prepare an adequate defense, in accordance with the*

requirements of applicable administrative, civil, or criminal procedures and subject to applicable legal exceptions.

- iii. Each Participant will provide Persons subject to an Administrative Proceeding with reasonable opportunities to defend, including the opportunity to be heard and to present, respond to, and challenge evidence.*

Where CCCS proposes to make a decision that the section 34 and/or 47 prohibitions under the Competition Act has been infringed, or that the section 54 prohibition has been infringed by a merger or will be infringed if an anticipated merger is carried into effect, CCCS will send a written notice of the decision to the person(s) likely to be affected by such decision. Notice of the proposed infringement decision shall state the facts on which CCCS bases the decision and CCCS' reasons for making the proposed infringement decision.

CCCS will allow the party receiving the notice an opportunity to make written representations and a reasonable opportunity to inspect the documents in CCCS's file relating to the proposed infringement decision, except that CCCS may withhold any document to the extent that it contains confidential information or which is an internal document. The party receiving the written notice may request in his written representations a meeting with CCCS to make oral representations to elaborate on the written representations already made in this regard.

i) Representation by Counsel and Privilege

- i. No Participant will deny, without due cause, the request of a Person to be represented by qualified legal counsel of its choosing.*
- ii. Each Participant will provide a Person a reasonable opportunity to present views regarding substantive and procedural issues via counsel in accordance with applicable law. Notwithstanding the foregoing, Persons may be required to provide direct evidence.*
- iii. Each Participant will recognize applicable privileges in accordance with legal norms in its jurisdiction governing legal privileges, including privileges for lawful confidential communications between Persons and their legal counsel relating to the solicitation or rendering of legal advice. Each Participant is encouraged to have rules, policies, or guidelines on the treatment of privileged information.*

During an entry to a premise for inspection under section 64 or section 65 of the Competition Act, the investigating officer may, where he/she considers it reasonable in the circumstances and subject to conditions, grant a request of the occupier of the premises entered by the officer to allow a reasonable time for the occupier's professional legal adviser to arrive at the premises before the investigation continues. A person required by CCCS under section 63 of the Act to provide specified information or an explanation of a specified document in person may be accompanied by a professional legal adviser.

CCCS will allow a party receiving the notice of proposed infringement decision an opportunity to make written representations and a reasonable opportunity to inspect the documents in CCCS's file relating to the proposed infringement decision. Section 66(3) of the Competition Act provides that a professional legal adviser is not compelled to disclose

or produce privileged communication or a document or other material containing privileged communication. Such communication or document or other material refers to those between a professional legal adviser and his client, or made in connection with, or in contemplation of, legal proceedings and for the purposes of those proceedings.

CCCS' treatment of privileged communications can be found in the CCCS Guidelines on the Powers of Investigation 2016, which are made publicly available on CCCS' website.

j) Decisions in Writing

- i. Each Participant in charge of issuing decisions or orders will issue in writing its final decisions or orders in which it finds a violation of, or imposes a prohibition, remedy, or sanction under applicable Competition Laws. Such final decisions or orders will set out the findings of fact and conclusions of law on which they are based, as well as describe any remedies or sanctions. Each Participant will ensure that all final decisions are publicly available, subject to confidentiality rules and applicable legal exceptions.*
- ii. Each Participant will ensure that all commitments it accepts to resolve competition concerns are in writing. Subject to confidentiality rules and applicable legal exceptions, each Participant will (i) make public the commitments it accepts, and (1) describe the basis for the competition concerns or (2) reference public materials in which those concerns are expressed, or (ii) provide a summary explanation of the commitments and the reasons for them.*

If CCCS makes a decision that the Section 34, Section 47 or Section 54 prohibition under the Competition Act has been or will be infringed, it must give such person(s) involved, a written notice of the decision setting out the facts on which CCCS relies and its reasons for the decision.

Where CCCS has made such a decision, it may give to such person(s) as it thinks appropriate, such directions as it considers appropriate to bring the infringement or circumstances to an end, and where necessary, requiring that person to take such action as is specified in the direction to remedy, mitigate or eliminate any adverse effects of such infringement or circumstances and to prevent the recurrence of such infringement or circumstances. CCCS may also impose a financial penalty if it is satisfied that the infringement has been committed intentionally or negligently.

CCCS is required under the Competition Act to notify any party(s) affected by such decision or direction within 14 days of making any decision or direction. CCCS will also publish the decision or direction on the public register maintained by CCCS, which is open to public inspection on CCCS's website.

CCCS publishes all of the commitments it accepts on the CCCS website. The publication will typically ensure that details of the commitments offered, or a summary of the details, as well as the competition concerns the commitments purport to address, are made public.

k) Independent Review

No Participant will impose on a Person a prohibition, remedy, or sanction in a contested Enforcement Proceeding for violation of applicable Competition Laws unless there is an

opportunity for the Person to seek review by an independent, impartial adjudicative body (e.g. court, tribunal, or appellate body).

Section 71 of Competition Act provides that an appeal against the decision of CCS (including a direction/imposition of a financial penalty) can be made to the Competition Appeal Board (CAB) within a specified time period as set out in the Competition Act. The CAB is an independent body comprising members appointed by the Minister for Trade and Industry. The CAB has wide powers in determining appeals and may (i) confirm or set aside all or part of the decision, (ii) remit the matter to CCCS, (iii) impose or revoke, or vary the amount of, a financial penalty, (iv) give such direction, or take such step, as the CCCS could itself have given or taken, or (iv) make any other decision which CCCS could itself have made.

Section 74 of the Competition Act provides that a further appeal from the CAB's decision can be made to the High Court a either on a point of law arising from a decision of the CAB or from any decision of the CAB as to the amount of a financial penalty.